



McGeorge Law Review

Volume 12 | Issue 2

Article 19

1-1-1980

Energy

University of the Pacific; McGeorge School of Law

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Energy*, 12 PAC. L. J. (1981).

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Energy

Energy; petroleum supply information reports

Public Resources Code §§25138, 25139, 25354-25358, 25362, 25364, 25366, 25368 (new and repealed); §3227 (amended).

SB 1444 (Holmdahl); STATS 1980, Ch 1055

(*Effective September 25, 1980*)

Support: Department of Finance

Chapter 1055 was enacted in an apparent attempt to increase state government understanding of the operations of the petroleum industry, to induce more responsible state action in the anticipation of future petroleum shortages, surpluses, or other disruptions, and to further the development of energy policies that are in the best interests of the state.¹ To achieve these goals, Chapter 1055 institutes monthly² and annual³ reporting requirements for certain members of the petroleum industry and quarterly and annual reporting requirements for the State Energy Resources Conservation and Development Commission (hereinafter referred to as the Commission).⁴ Civil penalties also are established by Chapter 1055 and will be imposed against persons in the petroleum industry who either falsify information in a report or fail to report within the specified period.⁵ The provisions of this Chapter are to remain in effect only until January 1, 1985, unless the repeal date is deleted or extended in a later statute.⁶

Specifically, Chapter 1055 provides that oil refiners⁷ and major oil marketers⁸ must submit monthly reports to the Commission within 30 days after the end of each reporting period.⁹ These reports must include data on petroleum receipts, output, inventory, and distribution for the prior month.¹⁰ Oil refiners, major oil marketers, major oil pro-

1. See CAL. PUB. RES. CODE §25350(a), (b); CAL. STATS. 1980, c. 1055, §6, at —. See generally Senator John Holmdahl, Press Release, Petroleum Industry Reporting Bill Passes Senate, no. 80-22, May 15, 1980.

2. See CAL. PUB. RES. CODE §25354(a).

3. See *id.* §25354(b), (d).

4. See *id.* §25358.

5. See *id.* §25362.

6. See *id.* §§25138, 25139, 25368.

7. See *id.* §25127 (definition of refiner).

8. See *id.* §25126 (definition of major oil marketers).

9. See *id.* §25354(a) (reporting requirements to become effective one month after effective date of Chapter).

10. See *id.*

ducers,¹¹ major oil transporters,¹² and major oil storers¹³ must submit to the Commission annual reports that are to include information pertaining to oil inventory, capacity, and distribution for the prior year.¹⁴ Integrated oil refiners¹⁵ that supply more than 500 branded retail outlets in the state are required to submit to the Commission an annual industry forecast containing specified information regarding the supply and demand of petroleum and petroleum products.¹⁶ These reporting provisions are in lieu of similar quarterly reports that otherwise would be required of specified members of the petroleum industry if they were not providing information pursuant to this Chapter during the time that this Chapter is in effect.¹⁷

Chapter 1055 also establishes penalties to be imposed on persons¹⁸ who are required to submit monthly or annual reports to the Commission, but who willfully falsify information or fail to furnish the report within the specified period.¹⁹ Any person who willfully falsifies information in any record or report is subject to a civil penalty not to exceed \$2,000.²⁰ Failure to furnish a report within the specified time period subjects a person to a civil penalty of between \$500 and \$2,000 per day, provided that the Commission has notified the person of the tardiness of the report and the report is not submitted within five days of the notification.²¹ Chapter 1055 provides, however, that no penalty will be assessed for a late report when either the person has filed timely objections with the Commission regarding the information and no hearing on the matter has been held by the Commission, or the Commission has held a hearing and the person properly has submitted the issue to a court of competent jurisdiction for review.²²

Any person required to present information to the Commission pursuant to Chapter 1055²³ may request that the data submitted be held in confidence.²⁴ Information presented may not be disclosed if public disclosure would result in unfair competitive disadvantage to the supplier

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11. *See id.* §25124 (definition of major oil producer).
 12. *See id.* §25138 (definition of major oil transporter).
 13. *See id.* §25139 (definition of major oil storer).
 14. *See id.* §25354(b).
 15. *See id.* §25354(d) (definition of integrated oil refiner).
 16. *See id.*
 17. *Compare id.* §25355 with *id.* §25320.
 18. *See id.* §§25116, 25362(c) (definition of person).
 19. *See id.* §25362(a), (b).
 20. *See id.* §25362(b).
 21. *See id.* §25362(a).
 22. *See id.*
 23. *See id.* §§25354, 25364(a).
 24. *See id.* §25364(a).

of the information.²⁵ Thereafter, the Commission must notify the provider of the information whenever there are requests or proposals to make the information public in an unaggregated form.²⁶ That person then has ten days in which to respond to the notice to justify continued confidentiality.²⁷ The Commission is required to consider any response to the notice and then issue a written statement setting forth reasons for the decision either to disclose the data or to keep it confidential.²⁸ Moreover, the Commission is required to wait ten days before making any public disclosure of information once it has issued a written decision to disclose the information.²⁹

Chapter 1055 specifies that the Commission must gather, interpret, and analyze the information submitted in the reports, with particular emphasis on price fluctuations, industry profits, expansion efforts, and emerging trends in the petroleum industry.³⁰ The Commission then must publish and submit quarterly reports to the Governor and the legislature containing summaries of the information collected.³¹ An annual report containing a description of emerging trends in the industry and specific recommendations for state action regarding methods to increase conservation, reduce or stabilize demand, increase production, and effect other changes in laws, regulations, or policies, also must be submitted to the Governor and legislature no later than April 15 of each year.³² Finally, the Commission, with the assistance of the State Board of Equalization, is empowered to conduct random or periodic audits and inspections of retail gasoline service stations to see if they are withholding supplies or violating pricing regulations.³³

In summary, Chapter 1055 makes changes in existing reporting requirements and imposes certain new requirements on specified members of the petroleum industry and the Commission³⁴ in an apparent effort to induce effective state action in the event of future disruptions in oil supply.³⁵ Civil penalties are also established by Chapter 1055 to ensure compliance with the reporting provisions.³⁶

25. *See id.* §25364(b).

26. *See id.* §25364(c).

27. *See id.*

28. *See id.*

29. *See id.* §25364(d).

30. *See id.* §25356(a).

31. *See id.* §25358(a).

32. *See id.* §25358(b).

33. *See id.* §25356(b).

34. *See generally id.* §§25354-25358.

35. *See id.* §25350.

36. *See id.* §25362.

Energy; nuclear power plant monitoring and alert systems

Health and Safety Code §§25620-25624.5, 25880-25880.4 (new).

SB 1184 (Garamendi); STATS 1980, Ch 1062

(Effective September 25, 1980)

Support: Department of Finance; Department of Health Services; Energy Resources Conservation and Development Commission; Office of Emergency Services

In an apparent attempt to improve the response of state and local officials to nuclear power plant accidents,¹ the legislature enacted Chapter 1062 to require privately and publicly-owned public utilities operating nuclear power plants with a generating capacity of 50 megawatts or more to install an automated alert system that will activate alarms in the California State Warning Center.² Chapter 1062 also requires affected public utilities to establish offsite radiation monitoring devices as specified by the Nuclear Regulatory Commission.³ These requirements are intended to assure timely and effective communication between power plant operators and the government officials responsible for implementing emergency procedures⁴ and to protect the public health and safety by ensuring that there is adequate monitoring of radiation levels in the event of a nuclear accident.⁵

Specifically, Chapter 1062 requires affected nuclear power plants to install automated alert systems by September 25, 1981,⁶ that will activate alarms in the California State Warning Center.⁷ The Chapter expressly provides that the alert system must duplicate certain existing alarms⁸ in nuclear power plant control rooms⁹ and must be operational whenever the corresponding alarms are required to be operational under Nuclear Regulatory Commission regulations.¹⁰ In addition, the Office of Emergency Services must establish provisions for the immediate notification of appropriate local officials upon the activation of the

1. See CAL. HEALTH & SAFETY CODE §25880; CAL. STATS. 1980, c. 1062, §4, at —. See generally Senator John Garamendi, Press Release, Garamendi Nuclear Safety Bill Sent to Governor, August 29, 1980.

2. See CAL. HEALTH & SAFETY CODE §25880.1(a).

3. See *id.* §25620. See generally UNITED STATES NUCLEAR REGULATORY COMMISSION REGULATORY GUIDE 1.97, August 1977, (copy on file at the *Pacific Law Journal*).

4. See CAL. HEALTH & SAFETY CODE §25880.

5. See CAL. STATS. 1980, c. 1062, §4, at —.

6. See CAL. HEALTH & SAFETY CODE §25880.1(b).

7. See *id.* §25880.1(a).

8. See *id.* §§25880.1(a)(1) (emergency core cooling alarm), 25880.1(a)(2) (high radiation alarm of the radioactive gas effluent stack monitor).

9. See *id.* §25880.1(a).

10. See *id.* §25880.1(d).

alert system.¹¹ Chapter 1062 also requires that the public utilities must consult with the Department of Health Services and an appropriate county emergency services agency prior to installing offsite radiation monitoring devices in compliance with Nuclear Regulatory Commission regulations.¹² Additionally, the information transmitted to the power plant control room from these offsite monitoring devices must simultaneously be transmitted to the State Warning Center.¹³

Chapter 1062 also places a limitation on the amount of capital expenditures required of a public utility in implementing the provisions of this Chapter.¹⁴ In no event is a plant operator required to spend more than \$200,000 to install an automated alert system,¹⁵ or more than \$1,000,000 to satisfy state requirements in establishing offsite radiation monitoring devices.¹⁶ Funds expended by nuclear power plants, however, may be reflected in increased rates.¹⁷

Failure to comply with the provisions of this Chapter does not constitute the basis for an action to enjoin the operation or start-up of a nuclear facility.¹⁸ Chapter 1062 does not include specific provisions, however, for action to be taken when a nuclear facility fails to comply with the provisions of the Chapter.¹⁹ Moreover, Chapter 1062 expressly declares that a plant operator need not make modifications or conduct operations in a manner inconsistent with the operating and licensing conditions of the Nuclear Regulatory Commission or the regulations of the Environmental Protection Agency.²⁰

11. *See id.* §25880.1(f).

12. *See id.* §25620. *See generally* UNITED STATES NUCLEAR REGULATORY COMMISSION REGULATORY GUIDE 1.97, August 1977 (copy on file at the *Pacific Law Journal*).

13. *See* CAL. HEALTH & SAFETY CODE §25621.

14. *See id.* §§25623, 25880.1(c).

15. *See id.* §25880.1(c).

16. *See id.* §25623.

17. *See id.* §§25622, 25880.1(c).

18. *See id.* §§25624.5, 25880.3.

19. *See generally id.* §§25620-25624.5, 25880-25880.4.

20. *See id.* §§25624, 25880.1(e).

Energy; State Assistance Fund for Energy Act of 1980

Financial Code §§32000-32823 (new).

SB 16 (Roberti); STATS 1980, Ch 819

Support: Department of Economic and Business Development; Department of Finance; Department of Food and Agriculture; Public Utilities Commission; Solar Business Office

In response to the national energy crisis brought on by the high rate of importation of conventional energy fuels,¹ the legislature has enacted the State Assistance Fund for Energy Act of 1980 (hereinafter referred to as the Energy Act).² The objectives of the Energy Act include (1) providing financing assistance for small businesses³ engaged in the alternative energy industry,⁴ (2) furnishing financing assistance to small companies to purchase, develop, or use alternative energy systems,⁵ (3) stimulating employment in the alternative energy industry,⁶ and (4) promoting energy conservation.⁷ For purposes of the Energy Act, a small business is defined by the Code of Federal Regulations⁸ as a business that is independently owned and operated, is not dominant in its field of operation, and meets the specified criteria within that field of operation.⁹ In addition, Chapter 819 supplements existing laws that encourage alternative energy use through utilization of a combination of tax credits and management assistance¹⁰ to further the long-range legislative goal of eventual alleviation of energy problems.¹¹

The Corporation

To implement this plan, the legislature has authorized the creation of a nonprofit corporation, the State Assistance Fund for Energy, California Business and Industrial Development Corporation,¹² on January 1, 1981.¹³ This corporation will be managed by a board of nine directors¹⁴ consisting of four state officers,¹⁵ and five public members appointed by elected state officials and state government committees¹⁶ no

1. CAL. FIN. CODE §§32100(a), 32202 (definition of conventional energy fuel).

2. *Id.* §§32000-32823.

3. *See id.* §32203 (definition of small businesses).

4. *Id.* §32101(a), (k); *see id.* §32209 (definition of alternative energy business firm).

5. *Id.* §32101(b), (k); *see id.* §32201 (definition of alternative energy system).

6. *See id.* §§32100(e), 32101(c), (f), (i). *See generally* Comment, *Taxation as a Tool of Natural Resources Management: Oil as a Case Study*, 1 *ECOLOGY L.Q.* 749 (1971).

7. *See* CAL. FIN. CODE §32101(d), (g), (j), (l).

8. *See id.* §32203; 13 C.F.R. §121.3-10 (1979).

9. *See* 13 C.F.R. §121.3-10 (1979).

10. *See* CAL. FIN. CODE §32100(c), (g); CAL. REV. & TAX. CODE §§17052.5, 23601 (tax credits for installation of solar energy system). *See generally* Aman & Howard, *Natural Gas and Electric Utility Rate Reform: Taxation Through Ratemaking?* 28 *HASTINGS L.J.* 1085 (1976-77); 9 *PAC L.J.*, REVIEW OF SELECTED 1977 CALIFORNIA LEGISLATION 543-45 (1978).

11. *See* CAL. FIN. CODE §32101(g). *See generally* 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §28 (Supp. 1980) (conservation of natural resources).

12. *See* CAL. FIN. CODE §32310. *See generally id.* §§32207 (definition of corporation), 31000-31056.

13. *Id.* §32300; *see* CAL. CORP. CODE §5060. *See generally id.* §§5110-6815 (nonprofit public benefit corporation).

14. *See* CAL. FIN. CODE §§32320, 32330, 32331.

15. *See id.* §§32320, 32321(a) (the Secretary of Business and Transportation, the State Controller, the President of the Corporation, and one member of the State Energy Commission who is selected by the members of the Energy Commission).

16. *See id.* §32321(b) (one member appointed by the Assembly Rules Committee, one by the

later than February 15, 1981.¹⁷ Terms and compensation for board members are specifically set forth by Chapter 819.¹⁸ For the purpose of transacting corporate business, the board will establish an office in Los Angeles,¹⁹ with the head office located in Sacramento.²⁰ Other offices may be established throughout the state when necessary.²¹ The general accounting procedures for the operation of the corporation will include a \$2,500,000 energy loan fund.²² Management consultants will be appointed by the corporation²³ to assist the loan recipients in managing their business and financial affairs.²⁴ A schedule of charges for management assistance calculated to cover the costs of services to small businesses will be established by the board.²⁵ Finally, to further the purposes of the Energy Act,²⁶ a division of the technical services department of the corporation will work closely with the Federal Department of Energy²⁷ and the alternatives division of the State Energy Commission²⁸ to gather information relating to alternative energy systems.²⁹

Loans

The corporation will receive \$750,000 from the Energy Resources Conservation and Development Reserve Account of the State General Fund³⁰ from which the corporation's operating expenses for the first fiscal year will be deducted.³¹ The remainder of this fund,³² plus the proceeds of loans from the State,³³ the sale of corporate-held securities,³⁴ and the principal of loans previously repaid by small businesses³⁵ will be used to provide new loans to small businesses.³⁶ Any person in

Speaker of the Assembly, and three by the Governor). *See generally id.* §§32204-32206, 32208, 32215 (definition of state officers).

17. *See id.* §§32323, 32326(b).

18. *See id.* §§32322, 32324, 32326.

19. *See id.* §32341(a).

20. *Id.* §§32341(b), 32342.

21. *See id.* §§32343, 32344.

22. *See id.* §§32810-32812. *See generally id.* §§32440-32443 (state energy loan fund).

23. *Id.* §32700.

24. *Id.* §32701.

25. *See id.* §§32702, 32703.

26. *Id.* §32101.

27. *Id.* §32711.

28. *Id.*; *see id.* §32208 (definition of Energy Commission).

29. *See id.* §§32710, 32711.

30. *See* CAL. STATS. 1980, c. 819, §2, at —. *See also* CAL. PUB. RES. CODE §25804 (definition of State Energy Resources Conservation and Development Reserve Account).

31. *See* CAL. FIN. CODE §32411.

32. *See id.* §32412.

33. *See id.* §§32442(a), 32800, 32810-32814.

34. *Id.* §32442(b).

35. *Id.* §32442(c).

36. *Id.* §32440.

the state may apply to the corporation for a business loan,³⁷ but no loans will be granted unless the applicant's business has been denied financing by at least one bank prior to application for the loan from the corporation.³⁸

Upon submission of an application, the small business may be pre-qualified for financing assistance if certain procedural requirements are met³⁹ and the requested financing is consistent with the general intent of the Energy Act.⁴⁰ If any problems in the application arise, the applicant will be aided by office assistants in submitting a corrected application.⁴¹ The application then will be submitted to the corporation's technology review office to determine if the quality and performance of the proposed energy system meet the standards set by the corporation.⁴² Next, the corporation's credit office will review the applicant's credit rating,⁴³ and the loan committee⁴⁴ will rank all current loan applications in order of priority⁴⁵ according to their minimum economic feasibilities⁴⁶ and their innovative and commercial potential as alternative energy systems.⁴⁷ Final approval will be given to the loan only if the loan is approved for guarantee by the Small Business Administration or another governmental loan guarantee authority.⁴⁸

Moreover, recipients of financing assistance must maintain records as required by the corporation, including records that fully disclose the disposition of the proceeds of any financial assistance and the costs of any alternative energy project financed by the corporation.⁴⁹ These records must be made available to corporate and state government officials or their representatives for audit purposes.⁵⁰ In summary, the legislature has devised a plan, using government guaranteed loans,⁵¹ to help small businesses implement conservation programs⁵² and convert to alternative energy systems⁵³ in order to combat some of the

37. *Id.* §32500.

38. *Id.* §32351.

39. *Id.* §32611.

40. *See id.* §§32101, 32611.

41. *See id.* §32614.

42. *See id.* §§32620-32625.

43. *See id.* §§32361, 32640.

44. *See id.* §§32640-32645.

45. *See id.* §32646.

46. *See id.* §§32648, 32218 (definition of minimum economic feasibility).

47. *See id.* §§32646-32648.

48. *See id.* §§32650-32653.

49. *See id.* §32505.

50. *See id.*

51. *See id.* §32100(g), (h).

52. *See id.* §32101(b), (d).

53. *See id.* §32100. *See generally* Grainey, *New Directions in Energy Planning: Recent Experience in the Pacific Northwest*, 11 CONN. L. REV. 388, 401-02 (1979).

problems arising from California's dependence on and consumption of imported fuels.⁵⁴

54. See CAL. FIN. CODE §32100(a). See generally McCormack, *The National Environmental Policy Act and Development of Alternative Energy Resources*, 11 CONN. L. REV. 375, 376 (1979).

Energy; financing for alternative source development

Public Resources Code §§26000-26027, 26029-26037, 26040-26042.4 (new); Revenue and Taxation Code §6010.8 (new).

AB 2324 (Hayes); STATS 1980, Ch 908

Support: Department of Finance; Energy Resources Conservation and Development Commission

Chapter 908 establishes the California Alternative Energy Source Financing Authority¹ (hereinafter referred to as the Authority) to assist industry within the state by providing a practical means of financing prompt and efficient development of alternative sources of energy² that are renewable or that more efficiently utilize and conserve existing scarce energy resources.³ Alternative sources are defined as the use of solar, biomass, wind, geothermal, or hydroelectricity under 25 megawatts, the conservation of energy, cogeneration technology,⁴ or the use of any other source of energy that reduces use of fossil and nuclear fuels.⁵ Through the sale of bonds and other securities,⁶ the Authority is to provide a commercially feasible means⁷ of financing the development of a project⁸ designed to utilize an alternative energy source for any person, company, corporation, partnership, firm, or other entity.⁹ The legislature believes that use of these alternative energy sources will reduce degradation of the environment¹⁰ and help meet the energy

1. CAL. PUB. RES. CODE §§26000-26042.4 (California Alternative Energy Source Financing Authority Act). See generally *id.* §26003(a) (definition of Authority).

2. See *id.* §§26001, 26002, 26003(d) (definition of alternative sources). See generally *Post v. Prati*, 90 Cal. App. 3d 626, 630-31, 153 Cal. Rptr. 511, 513 (1979) (general legislative concern for developing new energy sources).

3. See CAL. PUB. RES. CODE §26001.

4. See *id.* §25134.

5. See *id.* §26003. See generally CAL. ENERGY RESOURCES CONSERVATION & DEVELOPMENT COMMISSION: STATUS OF ALTERNATIVE ENERGY TECHNOLOGIES, vol. 5 (1977).

6. See CAL. PUB. RES. CODE §26011(c), (d). See generally *id.* §§26020-26027.

7. See *id.* §26001.

8. See *id.* §26003(e) (definition of project).

9. See *id.* §§26001, 26003(c) (definition of participating party).

10. See *id.* §26001. See generally Mogel, *Energy and the Environment*, 13 CAL. W.L. REV. 1-15 (1976).

needs of the people of the state of California.¹¹

Criteria for selection of projects to receive financing assistance from the Authority, provided in a manner consistent with sound financial practice, include the following: (1) the technological feasibility of the projects; (2) the economic soundness of the projects and a realistic expectation that the participating party will meet all financial obligations; (3) the contribution that the projects may make to a reduction or more efficient use of fossil fuel; and (4) any other factors that the Authority finds significant.¹² Under a financing contract with the Authority, the participating party is responsible for architectural and engineering design, and for construction and completion thereof, subject to design standards and necessary supervision procedures established by the Authority.¹³ Moreover, following application by a participating party the Authority must take official action to approve or disapprove the issuance of bonds or notes within a specified time period.¹⁴

The Authority is authorized to issue bonds,¹⁵ notes,¹⁶ and bond anticipation notes¹⁷ for funding¹⁸ and operational purposes,¹⁹ payable solely from revenues²⁰ of the Authority and the proceeds of its bonds.²¹ Neither the state nor any other political subdivision except the Authority is liable on the bonds.²² The Authority may contract with a participating party for construction of a project, and will hold title to all projects²³ until the principal of and interest on the bonds issued for financing of a particular project are paid and retired.²⁴ The Authority may enter into leases,²⁵ installment sales contracts,²⁶ or loan agreements²⁷ with a participating party, and may acquire interests in lands necessary or convenient for construction or operation of a project, but may not exercise the power of eminent domain.²⁸ Chapter 908 also provides that the Authority may fix, revise, charge, and collect such

11. See CAL. PUB. RES. CODE §26002.

12.. See *id.* §26011.5(a), (d).

13. See *id.* §26030.

14. See *id.* §26015.

15. See *id.* §§26020-26027.

16. See *id.* §26022.

17. See *id.*

18. See *id.* §§26002, 26011(c).

19. See *generally id.* §§26011(f), 26027.

20. See *id.* §26003(f) (definition of revenues).

21. See *id.* §§26020, 26022.

22. See *id.* §26024.

23. See *id.* §26030. *But see id.* §26032.5.

24. See *id.* §26014.

25. See *id.* §26031.

26. See *id.* §26032.

27. See *id.* §26032.5.

28. See *id.* §26013.

rates, rents, fees, and charges as will be sufficient, together with other revenues and available moneys to accomplish the following: (1) pay the principal and interest on any project indebtedness, including outstanding bonds and notes; (2) create and maintain reserves as specified or required in any resolution or trust agreement pertaining to issuance of bonds and notes; and (3) pay the Authority's operating and administrative costs.²⁹

Small projects under \$1,000,000 cost³⁰ or under one megawatt size may be grouped together and qualify as one bond sale.³¹ To facilitate maximum opportunity for use of Authority financing by individuals and small businesses or corporations, the Authority must provide information, assistance, and coordination for small projects.³² In the event a small business entity applying for Authority funding is denied approval, the Authority will assist the small business in locating other favorable funding.³³ If sufficient moneys are available to establish common reserve funds,³⁴ the Authority may use those funds to help provide reasonable security for small businesses that are otherwise unable to qualify for Authority financing.³⁵

29. *See id.*

30. *See id.* §26003(b) (definition of cost).

31. *See id.* §26016.

32. *See id.*

33. *See id.*

34. *See id.* §26016.5(b).

35. *See id.* §26016.5(a), (d).

